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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------|-------------|----------------------|---------------------|------------------|
| 09/624,123 | 07/24/2000 | Roy Harold Mauger | 476-1933 | 6345 |
| 23644 | 7590 | 08/19/2005 | EXAMINER | |
| BARNES & THORNBURG | | | TRAN, PHUC H | |
| P.O. BOX 2786 | | | ART UNIT | |
| CHICAGO, IL 60690-2786 | | | PAPER NUMBER | |
| | | | 2666 | |

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/624,123

Applicant(s)

MAUGER, ROY HAROLD

Examiner

PHUC H. TRAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: the term "whereby" make the claim vague and indefinite because applicant never recite "IP services" before. Appropriate correction is required.
2. Claim 11 and 21 are objected to because of the following informalities: the term "whereby" make the claim vague and indefinite because applicant never recite "a network management" before. Appropriate correction is required.

* Note: The claim limitations that employ phrases of the type "adapted to" are typical of claim limitations, which may not distinguish over the prior art. The limitations after the "adapted to" performing a function is not a (consider) positive limitation but only requires the ability to so perform.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 1-22 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6765921 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

a communications multi-service network comprising: a plurality of nodes interconnected via a plurality of quality of service capable tunnels (claim 9) and incorporating a frame-mode MPLS architecture whereby IP services are run directly over a frame-based core part of the multi-service network (claim 16) and legacy services are run over ATM adaptations and emulated ATM services on the core part of the network, the multi-service network further comprising one or more virtual switches for switching data traffic (claim 19).

a frame-mode switching communications multi-service network comprising:

a plurality of core nodes establishing a multi-service transport network (claim 9, lines 4-5), and a plurality of service nodes each coupled to a said core node whereby access to the transport is provided (claim 9, lines 3-5), and having a network management system arranged to define and manage one or more virtual public/private networks (claim 19) within said communications network, the method comprising configuring groups of said core nodes (claim 9) as abstract nodes within which any available path may selected to achieve a requested connection (claim 4), and wherein end to end label switched paths are established via the management system by specifying a series of abstract nodes (claim 1), each path is specified by identifying first and second real nodes and one or more abstract nodes there between (claim 2); a virtual public/private network is defined with multiple stages of first level constraint-based routed label switched paths (claim 2); each abstract node is defined by an IP address prefix, and

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all core nodes, which include that prefix in their IP address, are part of that abstract node (claim 5); a super-ordinate management function arranged to control creation, modification and deletion of virtual switches (claim 8).

For claims 1-22, the claims of patent disclose all the subject matter of the claimed invention, although the claim limitations of the patent merely broaden the scope of the invention. However, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to understand the remaining elements perform the same.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mauger et al. (U.S. Patent No. 6886043 B1) discloses communication network.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H TRAN whose telephone number is (571) 272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on (571)272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuc Tran
Assistant Examiner
Art Unit 2664

P.t
8/17/05



DANG TON
PATENT EXAMINER